

10-1074

IN THE SUPREME COURT OF THE STATE OF ARKANSAS

THE COOPER TIRE COMPANY,

Petitioner,

v.

THE HONORABLE OLLY NEAL,

Respondent,

and

LEE ANDREW TUCKER, *et al.*,

Real Parties in
Interest

**BRIEF OF AMICI CURIAE
RUBBER MANUFACTURERS ASSOCIATION AND
NATIONAL ASSOCIATION OF MANUFACTURERS
IN SUPPORT OF COOPER TIRE'S
PETITION FOR WRIT OF CERTIORARI**

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II. STATEMENT OF INTEREST

The Rubber Manufacturers Association (“RMA”) and National Association of Manufacturers (“NAM”), pursuant to the Arkansas Supreme Court’s order of October 21, 2010, and Rule 6.1 of the Rules of the Supreme Court, submit the following joint brief in support of the Petition for Writ of Certiorari, Prohibition, Mandamus, or other Supervisory Writ filed by The Cooper Tire & Rubber Company (“Cooper Tire”). The RMA and NAM will pay all costs associated with the filing of this *amicus* brief.

Neither the RMA nor NAM designed, manufactured or sold any of the products allegedly at issue in this product liability lawsuit.

Rather, the RMA is the primary trade association representing the interests of the tire manufacturing industry in the United States. RMA’s membership includes all of the country’s major tire manufacturers, like the Cooper Tire & Rubber Company (“Cooper Tire”). RMA’s tire company members employ over 50,000 people throughout the United States, with manufacturing facilities in 17 states, including 30 manufacturing plants and numerous distribution centers. Cooper Tire, for example, has a tire manufacturing plant in Arkansas, and there are many wholesale/retail tire outlets in Arkansas. Annually, the RMA members’ domestic manufacturing plants produce approximately 140 million passenger, light

truck and commercial truck tires. Annual tire sales in North America currently approximate \$30 billion. The tire industry is a critical supplier to the nation's motor vehicle industry, which includes not only cars, but also trucks, buses, industrial, agricultural and military vehicles. Thus, the RMA is in a better position than any of its members to analyze both the national and global economic trends in the automotive industry and the availability of raw materials to support that industry.

Similarly, the National Association of Manufacturers is the nation's largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 states. NAM's mission is to enhance the competitiveness of manufacturers by shaping a legislative and regulatory environment conducive to U.S. economic growth and to increase understanding among policymakers, the media and the general public about the vital role of manufacturing to America's economic future and living standards.

Both the RMA and NAM are vitally interested in this case because it involves the unfettered disclosure of Cooper Tire's trade secrets and other valuable commercial and technical information. This information allows Cooper Tire to compete in the automotive (tire) industry, and forms the backbone essential to the continued economic recovery in this country and abroad.

III. ISSUES PRESENTED

Whether the trial court abused its discretion by requiring Cooper Tire, contrary to existing law, to disclose documents containing trade secret information, and requiring the production of trade secret and confidential information without a protective order so that Cooper Tire will be irreparably harmed by the unfettered disclosure of this information?

IV. STATEMENT OF THE CASE

The background of this product liability case and the instant discovery dispute are aptly described in Cooper Tire's Petition for Writ of Certiorari and Emergency Motion for Stay of Discovery Order. Succinctly stated, this lawsuit arises from an alleged Cooper tire failure on a 1997 Buick LeSabre. Mary Tucker and Nadine Coleman, unbelted passengers in the vehicle, died in the ensuing one vehicle rollover which was allegedly caused by the tread separation of the left rear tire – a P205/70R15 steel belted radial passenger tire manufactured by Cooper Tire in Tupelo, Mississippi during the 34th week of 1998. (R.4.)

Plaintiffs engaged in discovery in this matter in two waves. At the beginning of the lawsuit, Cooper Tire provided more than 5,000 pages of documents in response to plaintiffs' first wave of discovery. (R.363-66, 425-68, 487.) Cooper Tire also attempted to negotiate the terms of a protective order with plaintiff under which additional commercially sensitive and proprietary documents

would be produced, to no avail. (R. 366, 469-85) Between April 26, 2010 and May 5, 2010, plaintiffs served four sets of requests for production on Cooper Tire, totaling 547 individual requests. Most of those requests sought the production of trade secret or commercially sensitive information. Request No. 42, for example, of plaintiffs' Sixth (sic Fifth) Requests for Production asks for:

All protected or trade secret materials provided in response to requests to produce, answers to interrogatories, or protected depositions for the following [5 prior] cases[.]

(R.198-99.) Even though many of the requested documents had previously been produced subject to a protective order in other cases, and many are privileged under Arkansas Rule of Evidence 507, the trial court ordered their wholesale production without the benefit of any protection sought by Cooper Tire. As a result, Cooper Tire will suffer irreparable harm from the unfettered disclosure of its technology and know-how. Moreover, Judge Neal's discovery order will resound adversely nationwide, and potentially affect all technology-based industries as the country moves forward with its economic recovery. Therefore, the RMA and NAM respectfully request that this court vacate the unprecedented trial court order.

V. SUMMARY OF ARGUMENT

The trial court in this matter failed to follow Arkansas law and the applicable law from other jurisdictions by ordering the production of Cooper Tire's technical and proprietary documents without any protective order under Ark. R. Civ. P. 26(c)(7). Many of these documents, from the face of plaintiffs' requests, contain Cooper Tire's invaluable trade secrets and other technical know-how. The unfettered disclosure of these documents would cause Cooper Tire irreparable harm since once a trade secret is disclosed, it can never be recovered.

Federal and most state courts follow a three-step process for granting or denying discovery of trade secrets. First, the party claiming a trade secret privilege must show by competent evidence that the requested information constitutes or contains a trade secret. Then, the burden of proof shifts to the party requesting the information to make a particularized showing that the information is both relevant and necessary to prove a material fact at trial. Finally, if both parties have met their burdens, the trial court must weigh the actual need of the requesting party for the information against the potential harm of its disclosure to the trade secret holder. If the balance favors disclosure, then the court must craft a protective order that will effectively prevent any use and dissemination of the trade secret beyond its case-specific need for disclosure. But if the court concludes that even a protective order would not effectively preserve the information's confidentiality,

then it may refuse production despite the requesting party's need for the information. *See Bridgestone Ams. Holding, Inc. v. Mayberry*, 878 N.E.2d 189, 193 (Ind. 2007) (extensively citing federal and state cases following this process); Milgrim & E. Bensen, 3 *Milgrim on Trade Secrets*, § 14.04[4][d], at 14-168 (2009) (stating general rule). Arkansas should follow this approach.

VI. ARGUMENT

By requiring the production of Cooper Tire's trade secret and commercially sensitive information without any showing of need by plaintiffs and without any protective order, the trial court violated a number of procedural and evidentiary rules in Arkansas. This clear departure from existing law highlights the trial court's legal error and places Cooper Tire in the position of suffering irreparable harm unless this Court intervenes. Thus, this case lends itself to certiorari adjudication, and Cooper Tire's petition should be granted. In addition, the economic effect of such an unwarranted disclosure of proprietary information underscores the need to vacate the trial court's discovery order.

Manufacturers go to great lengths to guard their secret formulas and other proprietary information since no manufacturer wants its know-how revealed. *See In re Bridgestone Firestone*, 106 S.W.3d 730, 731 (Tex. 2003). Indeed, when the Arkansas legislature first created the Trade Secrets Act ("ATSA"), Ark. Acts 439 sec. 8 (1981), it noted:

Because of the uncertainty with regard to a substantial number of patents and because of the commercial importance of trade secrets law to industry in the State of Arkansas, it is necessary to have the doubtful and confused status of the common law and statutory remedies for trade secrets clarified and an emergency is therefore declared to exist so that this Act shall become effective immediately upon its arrival.

Therefore, federal and state courts across the nation have almost uniformly held that the rubber formulas and other trade secrets of tire manufacturers are protected from disclosure. *See* List of Nationwide Rulings, Exhibit A. These decisions were rendered mainly under the trade secret protection laws of states that, like Arkansas, have adopted the Uniform Trade Secrets Act (“UTSA”).

The trial court, however, ignored these decisions and their underlying public policy by requiring Cooper Tire to produce its trade secrets and other proprietary information, and ordered that those documents be produced without a properly framed protective order. Cooper Tire and technology-based industries will be irreparably harmed by the trial court’s order, and the RMA and NAM respectfully request that it be vacated.

A. Certiorari Is the Appropriate Remedy in These Circumstances.

The need for a clear, unmistakable and stringent standard for the discovery of trade secrets and other proprietary information is highlighted by the real and disruptive danger that unwarranted disclosure presents, ultimately to the harm of consumers and the economy of Arkansas and the United States. Cooper Tire is one of the last two American global tire companies competing in the world today. It is well-recognized that the protection of this information is a necessary component of commerce, and has been protected since the Roman Empire. *Restatement (Third) of Unfair Competition*, § 39, cmt a. (1995). As one observer has noted:

In this information age, the trade secrets of any business are both its strength and its vulnerability. Key strategic plans, product specifications, and interested customer information allow a company to distinguish itself from competitors and pursue windows of opportunity in the marketplace.

The Trade Secret Handbook (Michael J. Lockerby, ed., American Bar Association 2000).

Under Arkansas law certiorari vacating a lower court order is appropriate when “... it is apparent on the face of the record that there has been a plain, manifest, clear, and gross abuse of discretion and there is no other adequate remedy.” *Kraemer v. Patterson*, 342 Ark. 481, 485, 129 S.W.3d 684, 686 (2000) (court granted certiorari to vacate trial court order permitting use of treating physician as a defense expert at trial in violation of Ark. R. Evid. 503(c)); *see also* *Dougan v. Gray*, 318 Ark. 6, 884 S.W.2d 239 (1994); *Lupo v. Lineberger*, 313 Ark. 315, 319, 855 S.W.2d 293, 295 (1993). Once a trade secret is disclosed, there is no way to retrieve it, and the property is destroyed. *See In re Remington Arms Co.*, 952 F.2d 1029, 1033 (8th Cir. 1991). Cooper Tire cannot wait for a final appeal of this matter, and certiorari is appropriate.

Therefore, the RMA and NAM respectfully request that the Court grant Cooper Tire’s petition for writ of certiorari and vacate the lower court’s discovery order.

B. Documents Sought by Plaintiffs Contain Proprietary Information.

There is no question that many of the documents sought from Cooper Tire in plaintiffs' second wave of discovery are trade secret under the Arkansas Trade Secrets Act. The ATSA defines "trade secret" as

information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(A) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(B) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Ark. Code Ann. § 4-75-601(4) (2010). The *Restatement (First) of Torts* § 757, which this Court considers when applying the ATSA, defines trade secrets in a similar fashion. *Wal-Mart Stores, Inc. v. P.O. Market, Inc.*, 347 Ark. 651, 66 S.W.3d 620 (2002).

Cooper Tire addressed each of the factors listed under the ATSA and the *Restatement* in the uncontroverted affidavit of Anthony E. Brinkman, former forensic engineer at Cooper Tire. Plaintiffs submitted no evidence whatsoever to challenge or rebut Mr. Brinkman's affidavit. Rather, they argued that Cooper Tire offered nothing to show the trade secret content of each requested document, even though the proprietary nature of the documents was clear from plaintiffs' request itself. (R.198-99.) The inescapable conclusion is, therefore, that many of Cooper Tire's documents requested by plaintiffs are trade secret. This is consistent with

nationwide rulings on this very issue. *See* Exhibit A. The remainder of Cooper Tire's documents, while perhaps not rising to the level of trade secret under the ATSA, clearly contain commercially valuable business information about Cooper Tire and its customers. These documents also are protected under the terms of Ark. R. Civ. Pro. 26(c)(7). *See Cardinal Freight Carriers, Inc. v. J. D. Hunt Transport Services, Inc.*, 363 Ark. 143, 150, 987 S.W.2d 642, 645 (1999). Nevertheless, the trial court ordered Cooper Tire to produce both trade secret and commercially valuable documents without any recognition of their proprietary and confidential nature and without any protective order or other protection to prevent dissemination to Cooper Tire's competitors. The trial court's ruling is contrary to Arkansas law and should be vacated.

In re Remington Arms, supra, undoubtedly is the seminal decision on the discovery of trade secrets and other confidential information. In *Remington Arms*, the plaintiff in a personal injury action sought discovery of Remington's New Bolt Action Rifle ("NBAR") program. Without addressing any of Remington's trade secret objections, the trial court ordered the production of NBAR information. 952 F.2d at 1031. The Eighth Circuit granted mandamus and vacated the trial court's order. The Eighth Circuit found: (1) that confidential business information has long been recognized as "property" under the 5th and 14th Amendments of the United States Constitution, *citing Carpenter v. United States*, 484 U.S. 19, 26

(1987); (2) that once the producing party establishes a trade secret or other confidential information under F.R.C.P. 26(c)(7), the burden shifts to the requesting party to show both relevance and need for the information (citations omitted); (3) if the district court orders production after balancing the requesting party's need for the information against the producing party's interest in protecting its proprietary nature, then it is incumbent on the court to issue an appropriate protective order to safeguard those property rights; and (4) recognizing that a protective order may be "largely ineffective in a trade secrets case, however, for once the information is wrongfully released, the trade secret is lost forever and no sanction imposed on the violator can retrieve it." *Id.* at 1032-1033.

Arkansas Rule of Civil Procedure 26(b)(1) provides that "[p]arties may obtain discovery regarding any matter, *not privileged*, which is relevant to the issues in the pending action." (Emphasis added). Additionally, Rule 26(c)(7) allows a trial court to issue a protective order "that a trade secret or other confidential research, development, or consumer information not be disclosed or be disclosed only in a designated way." Rule 507 of the Arkansas Rules of Evidence also protects trade secrets by granting them a conditional privilege: "[a] person has a privilege ... to refuse to disclose and to prevent others from disclosing a trade secret owned by him, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice. If disclosure is directed, the court shall

take such protective measures as the interest of the holder of the privilege and of the parties and the interests of justice require.” Therefore, trade secrets are not discoverable absent a showing that allowing the privilege would conceal a fraud or work injustice. In the instant matter, no such showing under Rule 507 was made.

Rather, without discussing any of the specific requests served by plaintiffs, the trial court ordered Cooper Tire to produce all of the requested documents by a certain date and without the benefit of a protective order. Even if plaintiffs had demonstrated a compelling need for disclosure of some confidential information, which they have not, Cooper Tire’s proprietary and confidential information must be protected from public disclosure.

Thus, the trial court’s order was manifest legal error and a clear departure from existing law on these issues. The order literally “takes” the intellectual property of Cooper Tire, creating irreversible harm. Cooper Tire and manufacturing industries in general will be unable to rely on their trade secrets and technology to differentiate themselves in the marketplace to the detriment of both companies and consumers at large. Thus, the RMA and NAM respectfully request that the trial court’s discovery order be vacated.

C. Plaintiffs Failed to Establish the Requisite Level of Need for the Requested Documents.

In this case, the trial court never considered the content or nature of the documents requested by plaintiffs. Without any showing of need by plaintiffs, the

trial court ordered Cooper Tire to produce those documents. The trial court exacerbated this dilemma by not protecting these documents, despite the fact that they had been protected when produced by Cooper Tire in prior litigation. The trial court put the cart before the horse by ordering Cooper Tire to produce its proprietary documents before determining whether those documents contained trade secrets, were privileged or even subject to discovery under Arkansas law. Furthermore, the trial court ordered disclosure of this information without any showing of plaintiffs' necessity to prosecute their product liability claim. Under the trial court's order, Cooper Tire will lose the protection it has developed for this information since it will not be afforded a protective order.

Most states protect trade secret and proprietary information from disclosure under the circumstances presented here and require plaintiffs to demonstrate a certain level of necessity for this information. The Texas Supreme Court, for instance, addressed this issue in *In re Bridgestone Firestone, Inc.*, 106 S.W.3d 730, 732 (Tex. 2003). The court opined that "the degree to which information is necessary in a case depends upon the nature of the information and the context of the case." In an earlier trade secret case, the court suggested that the information had to be "material and necessary to the litigation and unavailable from any other source." *Automatic Drilling Machines, Inc. v. Miller*, 515 S.W.2d 256, 259 (Tex. 1974). Other courts have likewise articulated similar standards for the required

proof. In the California case of *Bridgestone/Firestone v. Superior Court of Alameda County*, 9 Cal. Rptr. 2d 709 (Cal. Ct. App. 1992), the court discussed evidence that was necessary to the proof of one or more causes of action or necessary to provide a predicate for an expert's conclusion in the case. The *Kleinerman v. U.S. Postal Service*, 100 F.R.D. 66, 69 (D. Mass. 1983) decision referenced "issues [that] cannot be fairly adjudicated unless this information is available." Under any of these definitions employed by courts, the requesting party must make some evidentiary showing to satisfy their burden of proving need for the trade secret information.

In this case, plaintiffs submitted an affidavit from their trial expert, Dennis P. Carlson, purporting to demonstrate, *inter alia*, a need for Cooper Tire's proprietary materials. (R.395-97.) According to Mr. Carlson, the requested documents "are material and relevant to tread separation cases." In addition, since the documents present evidence on "any important universal or near-universal issues," they are particularly relevant to him. But mere relevance is not enough. *See In re Continental General Tire*, 979 S.W.2d 609, 611 (Tex. 1998) (recognizing that a "requesting party must establish more than mere relevance to discover trade secrets, or the statutory privilege would be 'meaningless.'"). Moreover, Mr. Carlson does not indicate how those documents are necessary to form his opinion or that he will be unable to reach an opinion with regard to the subject tire without

access to the documents.* In sum, Mr. Carlson's conclusory comments do not establish the requisite level of need to vitiate Cooper Tire's proprietary interest in its business and technology. See *Laffitte v. Bridgestone Corp.*, 674 S.E.2d 154 (S.C. 2009). By making conclusions of "relevance" and "materiality," he merely makes legal conclusions and does not even approach the evidentiary standard of specific compelling necessity for information, characterized by the plaintiffs themselves as "trade secrets." See *In re Bridgestone/Firestone, Inc.*, *supra* at 106 S.W.3d at 733-34.

One aspect of the risk of disclosure is what courts have come to call the problem of "inevitable disclosure." See, e.g., *PepsiCo v. Redmond*, 54 F.3d 1262 (7th Cir. 1995) and *Merck and Company, Inc. v. Lyon*, 941 F.Supp. 1443 (M.D.N.C. 1996). As a number of courts have recognized, it is often impossible for a person who knows a trade secret to segregate that information from other non-proprietary materials. Thus, in *PepsiCo*, the court issued an injunction against a former employee because the protected trade secrets were so intertwined with his

* Both the RMA and NAM are concerned by the fact that Mr. Carlson, who will have access to Cooper Tire's proprietary materials under Judge Neal's order, has violated previous protective orders and failed to safeguard a tire company's confidential materials. See *Nevil v. Ford Motor Co.*, No. CV294-015, 1999 WL 1338625 (S.D. Ga. 1999).

general knowledge that he could not possibly work without disclosing them. *PepsiCo, supra*, 54 F.3d at 1271.

This is particularly true in the age of *Daubert*. See *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993); see also, *Green v. Alpharma, Inc.*, 373 Ark. 378 (Ark. 2008) (applying Arkansas's interpretation of the *Daubert* factors of evidentiary reliability). Courts increasingly scrutinize the proposed testimony of experts for a reliable foundation and methodology. As a result, experts may rely on trade secret information obtained in one case to support their opinions about the same company, or even a different defendant, in another case.

In the context of this matter, the decisions cited by the RMA and NAM suggest that trade secrets are privileged and protected unless an expert is unable to reach a material opinion without access to them, or where plaintiffs' claims cannot be fairly tried without the information. Conversely, invading trade secrets to increase the settlement value of a case, or to insulate an expert from a *Daubert* challenge, or when the information is merely helpful, are insufficient bases to disclose trade secrets. Therefore, the RMA and NAM respectfully request that this Court vacate the trial court's order, and remand this matter with appropriate instructions.

D. Sound Public Policy Underscores the Need to Vacate the Trial Court's Discovery Order.

Trade secrets, such as compound formulas, the curing procedures for those compounds, proprietary “know-how” and test data, are vital trade secrets in the tire manufacturing industry. Likewise, commercially sensitive information like customer satisfaction and/or relations programs, while perhaps not rising to the level of trade secret, is equally important to a tire manufacturers’ ability to compete. No manufacturer can allow its competitors to have access to its highly proprietary information, whether currently in use or previously used. *See, e.g.*, A.C.A. § 4-75-601 (2010). Industry Week recently reported, for example, that one of Michelin’s employees offered to sell confidential information to Bridgestone Corporation, which cooperated with authorities in the investigation and conviction of that employee. *See* Exhibit B attached hereto. Similarly, two individuals were recently indicted in the Eastern District of Tennessee for attempting to steal trade secrets from Goodyear for a Chinese tire company. *See United States v. Clark Alan Roberts & Sean Edward Howley*, No. 3:08-cr-00175 (E.D. Tenn.); Two Indicted for Conspiring to Steal Trade Secrets from Goodyear Tire and Rubber Co., 2009 WLNR 5483721 (Mar. 22, 2009).

Competition for the sale of products in the tire industry, as in other manufacturing industries, is largely technology-driven and based on company know-how obtained over a number of decades. Tire companies, like other

manufacturers, invest millions of dollars in their research and development programs. Many of these companies have designed and developed their own proprietary rubber formulas and employ unique manufacturing processes based on those formulas. In an industry depending on the sale of typically low-margin products, trade secret and proprietary information provide the means to compete effectively, even in difficult economic times. *See, e.g.,* Richard Russell “*How the Rubber Hits the Road,*” Globe & Mail, Feb. 12, 2009. The unwarranted and unnecessary disclosure of these trade secrets adversely affects competition within the industry, both in the United States and abroad. In fact, the number of tires imported from third world countries like China, India, South Korea, and those in Eastern Europe has been increasing annually. *See* Bruce Davis, *Chinese-Made Tire Imports Gain Shares*, Tire Business (May 25, 2009). The tire companies in those countries would be eager to obtain Cooper’s knowledge, technology and trade secrets. The disruption of lawful competition through the improper acquisition of that “know-how” could adversely affect consumers both in Arkansas and throughout the nation in the form of higher prices and lost jobs.

At the same time, the threat to trade secret and proprietary information has never been more apparent. In a recent survey,^{**} for example, the American Society

^{**} The ASIS has been conducting surveys “every two or three years” of this type since 1991. The results are “used to educate audiences (including private

of Industrial Security (“ASIS”) International and The National Counterintelligence Executive (“NCE”) reported that more than 60% of the Fortune 1000 and other responding companies had attempts made against them to learn their trade secrets and know-how. *See “Trends in Proprietary Information Loss: Survey Report,”* (NCE & ASIS Foundation, August 2007). The dollar value of these attempts ranged from \$10,000 to \$5.5 million. *Id.*, p. 3. According to the survey, the responding companies reported that the ability to differentiate products, the loss of competitive advantage, and the loss of goodwill, value, and reputation resulted from attempts to improperly obtain their technological know-how. *Id.* Additionally, there have been numerous reports of companies being forced out of business when competitors obtained the hard-earned “know-how” and expensive trade secrets of those companies.

The enormity of this risk is dramatically emphasized in the well-publicized case of Ellery Systems, Inc., a software supplier to NASA and the Department of Defense. After one of its employees resigned and sold the company’s source code to a foreign country, which then established its own software development firm in

companies and governmental entities) about the variety of ways in which information is compromised and the effect that these losses have on U.S. corporations and the nation’s economic well-being.” *Id.*, 1. Significantly, these losses in 2006 were comparable or higher than in 2004, *Id.*, p. 3.

the United States, Ellery Systems was forced out of business. This episode, and others like it, led to the passage of the Federal Economic Espionage Act of 1996. *See* Testimony of Geoffrey Shaw, former CEO of Ellery Systems, before a joint session of the U.S. Senate Select Committee on Intelligence and the Subcommittee on Terrorism, Technology and Government Information of the Joint Judiciary Committee, (Feb. 27, 1996). *See also* Jonathan Landay, “Congress Moves to Stop Spies in the Work Place,” The Christian Science Monitor (March 12, 1996) at 1.

The trial court’s order marks a clear departure from the decisions of other trial and appellate courts which have protected trade secrets from unwarranted disclosure. Those courts have required the requesting party to demonstrate that the information is both “relevant and necessary to its case” before vitiating the producing party’s proprietary interest in its know-how. Even then, an appropriate protective order is generally required to further protect the producing party’s proprietary interests. This is in accord with sound economic policy that respects the fundamental property rights of the parties. *See* discussion of Arkansas TSA on pp. 8-9, *supra*, and Michael J. Hutter, “The Case for Adoption of a Uniform Trade Secrets Act in New York,” 10 Alb. L. J. of Sci. & Tech. 1, 3 (1999) (“innovation is key to a dynamic economy... sound public policy seeks to encourage invention of new products, processes and technologies.”).

For these reasons, the RMA and NAM urge this Court to grant Cooper Tire's petition for writ of certiorari, and to vacate the trial court's discovery order and enter any further relief to Cooper Tire that the Court deems appropriate.

VII. CONCLUSION

The trial court abused its discretion by ordering the disclosure of Cooper Tire's confidential and proprietary information without a protective order limiting the dissemination of the information and without showing that the proprietary information was essential to plaintiffs' case. To prevent this and future abuses, this Court should vacate that order.

Respectfully submitted,

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